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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,682	06/16/2005	Alexander Macasaet	30882/DP027	8592

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EXAMINER

PERREAULT, ANDREW D

ART UNIT

PAPER NUMBER

4177

MAIL DATE

DELIVERY MODE

05/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/539,682

**Applicant(s)**

MACASAET ET AL.

**Examiner**

ANDREW PERREAULT

**Art Unit**

4177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI-08)  
Paper No(s)/Mail Date 12/12/05, 1/10/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is responsive to the preliminary amendment filed on June 16, 2005. As directed by the amendment: claims 1, 5- 7, 9-11, 13, and 15 have been amended, claim 4 has been cancelled, and new claim 16 has been added. Thus, claims 1-3 and 5-16 are presently pending in this application.

### ***Claim Objections***

1. Claims 5-6 are objected to because of the following informalities: "A container as claimed in claim 1 4". Claim 4 was cancelled in the preliminary amendment. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, 7-9, 10, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lochmiller (4383609).
4. As to claims 1 and 7-8, Lochmiller discloses a container 40 including four sidewalls 45, 46, 47, 48 (col. 2, lines 12-13; fig. 4, 6) with corners 41, 42, 43, 44 there between, the sidewalls 45, 46, 47, 48 defining an internal space for storage of an item; the sidewalls 45, 46, 47, 48 being foldable about the corners 41, 42, 43, 44 for ease of storage (col. 2, lines 24-24; fig. 4, 6, 9); the sidewalls 45, 46, 47, 48 having an open base and an open top (fig. 6); a cover 60 (col. 2, lines 35-37; fig. 8-9) for the open top

and the internal space; and a pallet 10 (col. 1, line 36; fig. 1, 6, 7, 9) onto which the sidewalls 45, 46, 47, 48 can be placed; each sidewall 45, 46, 47, 48 of the container 40 having a perforated line 64 (col. 2, lines 25-29; fig. 4) to enable the height of the sidewalls 45, 46, 47, 48 to be varied, wherein the perforated line 64 is parallel to an edge of the base for folding (fig. 6, 7, 9); wherein the pallet 10 has a top (fig. 1), the top being planar and solid, and being of a length and width slightly greater than the corresponding dimensions of the sidewalls 45, 46, 47, 48 (fig. 9); wherein a gap is formed between an outer edge of the four sidewalls 45, 46, 47, 48 and a peripheral edge of the top of the pallet (fig. 9).

5. As to claim 5, as best understood, Lochmiller discloses that the sidewalls 45, 46, 47, 48 are foldable along the perforated line 64 to vary a height of the sidewalls 45, 46, 47, 48 (col. 2, lines 25-29, fig. 4, 6, 7, 9).

6. As to claim 9, Lochmiller discloses that the open base is for enabling the item to be placed directly on the pallet 20 (fig. 6).

7. As to claim 10, Lochmiller discloses the cover 60 is shaped to conform with the internal space defined by the sidewalls 45, 46, 47, 48 (fig. 9) and comprises a cover top 61 (fig. 9), and cover sides 62 (fig. 9), the cover 60 being adapted to be readily removable over the open top and locatable on an outer surface of the four sidewalls 45, 46, 47, 48 in the manner of a snug fit.

8. As to claims 13-14, Lochmiller discloses that the sidewalls 45, 46, 47, 48 and the pallet 10 combine to form an open-top box (fig. 6, 7) and the open-top box is able to be closed by the cover 60 (fig. 9)

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9. As to claims 15-16, Lochmiller discloses that the top of the pallet 10 forms a solid base for the sidewalls 45, 46, 47, 48 (fig. 9, 10).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-3 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lochmiller in view of Barnes et al. (3968895).

12. As to claims 2-3 and 11-12, Lochmiller discloses the claimed invention but does not disclose that the sidewalls are made of a plastic weather-resistant material or that the pallet is formed of a plastic weather-resistant material. However, Barnes et al. teaches a similar container 1 (fig. 1) including four sidewalls 11a-11c, 15, a cover 37, and a pallet 3 (fig. 1) wherein the sidewalls 11a-11c, 15 are made of a material consisting of plastics (col. 5, lines 30-41), wherein the material is weather-resistant (col. 5, lines 30-41); and the pallet 3 is formed of a material of plastics (col. 5, lines 30-41), wherein the material is weather resistant col. 5, lines 30-41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Lochmiller reference, such that the sidewalls and pallets are made of a plastic weather-resistant material, as suggested and taught by Barnes et al., in order for the container to be reused by being capable of withstanding damage from

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rough transporting conditions such as inclement weather and chemicals (col. 5, lines 30-41).

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lochmiller in view of Govang et al. (4877137).

14. As to claim 6, as best understood, Lochmiller discloses the claimed invention but does not disclose that the sidewalls are shearable. However, Govang et al. teaches a similar container 64 (fig. 1) including four sidewalls 62 (fig. 1, 5), and a pallet 10 (fig. 1), each sidewall 62 of the container 64 having a perforated line 66 (fig. 5), wherein the sidewalls 62 are shearable along the perforated line 66 to vary the height of the sidewalls 62 (col. 6, lines 23-25; fig. 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Lochmiller reference, such that the sidewalls are shearable, as suggested and taught by Govang et al., in order to adjust the height of the sidewalls of the container to conform to the contents of the container (col. 6, lines 15-25).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frye (2534010), Nilsson et al. (3659707), Cayton (4165806), Govang et al. (4919270), Gossier et al. (4927026), Dykhous (5267663), Mendoza et al. (5350066), Zajdlik et al. (6019226), and Hacker (6431363) disclose a container for containment and transport of objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAULT whose telephone number is

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(571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Quang D. Thanh can be reached on (571)272-4982. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P./  
Examiner, Art Unit 4177

/Quang D. Thanh/  
Supervisory Patent Examiner,  
Art Unit 4177